

FILED
JUL - 1 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

whose behalf the writ is applied for, who is confined from liberty at Calipatria, California in the custody of Superintendent Harry Smells-warden as a result of a judgement of the Superior Court of San Diego County on or about the 1st day of November, 2007 in case # SCD206353 sentencing petitioner to a term of imprisonment not to exceed 3 years. Said sentencing was carried out pursuant to a negotiated plea of guilty. The subject of this action is the violation of the plea bargain entered into by petitioner. Petitioner has a right and entitlement to receive the bargain which was the basis for the plea petitioner agreed to make. The purpose of this petition is to bring this matter to the court in order to remedy the violation of the plea bargain entered into by petitioner.

FACTS IN SUPPORT OF PETITION

The attached declaration of petitioner is hereby fully incorporated by reference and along with the transcripts of the plea negotiation and subsequent sentencing will disclose that prosecutor, and/or the court, was agreed that in exchange for said guilty plea a term of imprisonment of County Year or probation(re)Counsel would be imposed against petitioner. Petitioner specifically was advised and/or otherwise was of the state of mind that the plea bargain entered into would result in the following sentence and/or other actions: I was being charged with aiding and abetting during the Preliminary Hearing, after they found out I was duped, and wasn't the Mastermind. Also I was Extradited from Georgia never been to the state of California this was an Internet Scam. The plea bargain petitioner entered into has been violated by the court and as a result petitioner is being subjected to onerous punishment and/or other disabilities in violation of the plea agreement. The transcripts of the plea negotiation and sentencing are presently unavailable to petitioner. Petitioner does believe and therefore does assert that examination of the records of this negotiated plea will disclose facts which will support the allegations contained in this petition. Further, had petitioner been knowledgeable and aware of the sentencing resulting in the aforementioned onerous punishment that petitioner would not have entered into the plea.

PRAYER

WHEREFORE, Good Cause having been shown, the court should grant the Great Writ as follows:

1. Declare petitioner's rights;

1 2. Order that petitioner should be given the right
2 exercise the option of enforcing the plea to which petitioner
3 agreed;

4 3. Appoint petitioner counsel to assist in the litigation
5 necessary to remedy the subject of this petition;

6 4. that the court grant other and further relief that
7 is just and proper.

8 DATED: 6-24-08

Preston L. Moore

PETITIONER
IN PRO PER

11 VERIFICATION

12 I am the petitioner in the above cause of action, have
13 read the statements herein, and declare under penalty of perjury
14 that upon information and belief these statements are true and
15 correct. Executed this 24th day of the June,
16 2008 at Calipatria, California pursuant to California
17 Code of Civil Procedure, Sections 446 and 2015.5.

18 [Signature]

19 PETITIONER and DECLARANT

DECLARATION OF Writ of Habeas Corpus

I, Preston L. Moore, HEREBY DECLARE:

1. That I am the petitioner in the above cause of action

2. That I am incarcerated within the Department of Corrections at Calipatria State Prison as a result of a commitment from San Diego County - County for violation of Penal Code, Section 1192.5 as the result of a negotiated plea in Superior Court Case Number SCD 206353;

3. That I was sentenced in violation of the agreement and understanding to a term more onerous than that negotiated to;

4. That this negotiated plea was agreed to by the prosecution and judge in the aforementioned cause of action;

5. That the imposition of a sentence more onerous than that plead to violates petitioner's rights as guaranteed by the due process and equal protection clauses of both the state and federal Constitutions;

6. That without intervention by this court I will be subject to the illegal restraints described and/or the likelihood of imprisonment beyond that which was agreed to by the plea of petitioner;

7. That I am a layperson and untrained in law.

I am the declarant in this action, have read the declaration, and swear under penalty of perjury that upon information and belief this declaration is true and correct. Executed this day of 24th of June 2008 at Calipatria, California to Civil Code of Procedure, Sections 446 and 2015.5.

[Signature]
DECLARANT

MEMORANDUM OF POINTS AND AUTHORITIES

THE INFLICTION OF PUNISHMENT IN VIOLATION OF A
NEGOTIATED PLEA IS A VIOLATION OF THE DUE PROCESS
OF LAW. 8th and 14th Amendment to the United
States Constitution; California Penal Code, Section
1192.5.

The United States Supreme Court established standards for negotiated pleas in Boykin v. Alabama, (1969) 395 U.S. 238, 89 S.Ct. 1703, 23 L.Ed.2d 274. In Boykin, (supra) the court held that a guilty plea would not be accepted unless there was affirmative evidence that the plea was not only voluntary, but further concluded that the trial court must use the "utmost solicitude...in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequences." Boykin v. Alabama, (supra) at 243-244. In light of such standards the federal courts have time and again vacated or forced compliance with pleas when defendants have been able to show that they have been unfairly subjected to punishment in excess of that bargained for through the plea negotiation. Where a promise is "unfulfilled," specifically denies that the plea "must stand." Brady v. United States, (1970) 397 U.S. 742, 755, 90 S.Ct. 1463, 25 L.Ed. 747, 760. Petitioner brings to the court just such a violation of the plea entered into as the result of negotiation and good faith on the part of petitioner. Petitioner did enter into a plea as the result of a specific understanding as to conditions which have not been violated subjecting petitioner to more onerous punishment than that plead to.

In a series of cases, perhaps lead by the United States Supreme Court decision in Santobello v. New York, (1971) 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427, negotiated pleas and the issue of compliance of same have been determined to be mandatory.

1 ...when a plea rests in any significant degree on a
2 promise or agreement of the prosecutor, so that it can
3 be said to be a part of the inducement or consideration,
4 such a promise must be fulfilled..." (Emphasis Added)
5 Santobello v. New York, (supra) at 262.

6 In the spirit of Santobello, (supra) federal courts have time and
7 again required compliance with negotiated pleas, even to the point
8 of striking statutory mandate of parole. In United States ex rel.
9 Baker v. Finkbeiner, (1977) 551 F.2d 180, where a defendant had
10 entered into a negotiated plea of guilty for a specific sentence
11 was neither informed prior to or during the bargaining session,
12 at the sentencing proceeding that parole was statutorily required
13 penalty to be part of the sentence, the court stated:

14 "We do not find the imposition of a two year parole
15 term to be an insignificant punishment. 111 We
16 therefore hold that Baker's guilty plea was unfairly
17 induced in violation of the Due Process Clause.
18 Baker v. Finkbeiner, (supra) at 184.

19 With regard to the question of remedy and necessity to
20 set right this violation of the Due Process Clause, the Baker court
21 went on citing Santobello, (supra) at 184:

22 "Under the circumstances of the case it would be
23 unjust to simply vacate the guilty plea, which
24 theoretically would allow the State to reindict
25 Baker. Since he has already performed his side
26 of the bargain, fundamental fairness demands
27 that the State be compelled to adhere to the
28 agreement as well." (Emphasis Added) Citing
from Santobello, (supra) 404 U.S. at 265.

29 Likewise, in United States ex rel Ferris v. Finkbeiner, (1977) 551
30 F.2d 185, where the trial court "uninformed and misinformed" defend-
31 ant, the court therein stated at page 187:

32 "Since Ferris has substantially begun performing his
33 side of the bargain, it would not be fair to vacate
34 the plea and require him to go through the procedure
35 anew. Fundamental fairness can be had by limiting
36 his term of custody to that portion of the sentence

Further, in United States ex rel Johnson v. DeRobertis, (1982) 541F. Supp. 547, where the state argued that the plea negotiation "yielded no agreement" and therefore Johnson entered his plea without a justified expectation of a specific sentence and was not deprived of any bargain, the court rejected such argument and violated the attached punishment which violated the plea and stated at page 550:

"Baker establishes that the trial judge is bound to a plea bargain when it participates in the plea negotiation process and ratifies the resulting agreement. A defendant who pleads guilty in reliance on such agreement cannot be sentenced to a term longer than he was promised. In the present case, the trial judge virtually sealed the plea agreement by disclosing the sentence he would impose once the petitioner pleaded guilty. The disclosure obviated the need for further negotiations between the states attorney and defense counsel. If a trial court is bound by an agreement it ratifies, it is surely bound by an agreement it authors." (Emphasis Added) United States ex rel Johnson v. DeRobertis, (supra) at 550, see also fn 5.

California Courts have long recognized and established standards for the use of negotiated pleas. California Penal Code, Section 1192.5

"Where such a plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant, ...can not be sentenced on such a plea to a punishment more severe than that specified in the plea and the court may not proceed as to such plea other than as specified in the plea." (Emphasis Added) California Penal Code, Section 1192.5.

Absent serious misrepresentations by the defendant in obtaining a plea bargain, such as fraud in negotiating the plea, California authority establishes entitlement to the terms bargained for or if a plea is violated, to withdraw the plea or in having its com-

ditions enforced. People v. Flores, () C.3d 205; People v. Johnson (1974) 10 C.3d 868; In re Lawler, (1979) 23 C.3d 190; People v. Calloway, (1981) 29 C.3d 656; People v. Mancheno, () 32 C.3d 855; People v. Newton, (1974) 42 CA 3d 292; People v. Martinez, (1979) 88 CA 3d 890; Penal code, Section 1192.5. In striking down imposed punishment more onerous than that negotiated and plead to the court applied the Due Process violation rule rationale that the experts, i.e., the courts and prosecuting attorney are/or should be aware at the time of the "deal making" precisely what the understanding of defendant is or that a mandatory rule applies whereas the defendant is often ignorant of that fact.

"Under the circumstances, we hold that in entering his plea defendant bargained with recognized authorities for a sentence of no more than five years to life and that he must be given the benefit of his plea bargain. (Emphasis Added) People v. Flores, (supra) 6 C.3d at

In formulation of a remedy for correction of this plea bargain violation it is instructional to note the posture of Justice Douglas, in Santobello, (supra):

"In choosing a remedy, however, a court ought to accord a defendant's preference considerable, if not controlling, weight inasmuch as the fundamental rights flouted by a prosecutor's breach of a plea bargain are those of the defendant, not of the State. Santobello, (supra) 404 U.S. at 436.

CONCLUSION

Petitioner is entitled to enforcement of the negotiated plea, the terms of which he is in compliance with, and should not receive punishment beyond that bargained for. Because petitioner did not agree to the punishment received as the result of the negotiated plea, the punishment imposed in excess of the plea negotiated

should be purged as being violative of the terms of the plea.
 Petitioner should be discharged from all further restraints by
 those agreed to as a condition of the plea, or in the alternative
 petitioner should be given the choice to withdraw the plea. The
 relief prayed for should be granted and the writ should be issued.

PROOF OF SERVICE BY MAIL

I am a resident of the State of California, over the
 age of 18 years, and not a party to the within cause of action.
 That on or about the 24th day of June, 2008 I did
 serve upon the custodian of petitioner a true copy of this Petition
 for Writ of Habeas Corpus by placing same in the U.S. Mail postage
 prepaid or that I did provide same to a Correctional Officer for
 mailing and that the following address was attached:


Addressed as follows:

Calipatria State Prison

Po Box 5008 MA-64 how

Calipatria, California 92233

I declare under penalty of perjury that the foregoing is
 true and correct. Executed this 24th day of June, 2008
 at Calipatria, California pursuant to California
 Code of civil Procedure, Sections 446 and 2015.5


 F95661
 DECLARANT

Statement of Facts

I am an Inmate at Calipatria State Prison. I was extradited from the State of Georgia on or about May 2007. I have never visited nor have I been a resident of the State of California.

On or about January 2007, I applied for a Job online at Career Builders.com a national employment site. I also have a parttime collection service I have been running for about sixteen years in the State of Georgia. I was contacted by a potential employer who was looking for a national representative to collect funds from their clients for Goods and Services. At no time did I know they were Crooks until I was contacted by my banker. I had recieved a bad check from another State in which I was told the client canceled the order. after that incident, the Company Euro finance contacted me back by email →

② and said they have another client they want me to collect from. I went to local authorities to see if there had been any fraud reports on this Company Eurofinance they said no. I didn't meet with a Detective, just a dispatch Clerk who said she would have someone get in contact with me. by that time the Company had transferred 108K supposed to have been from a San Diego realstate Company. I came to my bank in the Company's name out of San Diego Tanis properties. I later found out that the funds transferred was a fraud. These funds came into my Small business Account we had a Contract with Eurofinance outlining our duties. I would never had dealt with Crooks, I have no prison priors. I feel I was mislead by my paid Counsel. I asked under distress what would I need to do to keep from going to prison. He said take full responsibility and he would get me probation or possibly a county year. I put my trust in him but probation said I was not suited for probation in the State of California since I was a non-resident. therefore I had to face sentencing from a Superior Court Judge.

①
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I have a family back in Georgia with a wife and four children one daughter just went off to College at michigan state, I am a home owner and worked as a legal Assistant to the Georgia Legal Attorney's, I could of fought extradition but I knew I was innocent and never had problems ever in my business for fraud, Georgia gave me a polygraph in which I passed after bailing out of George Bailey Detention facility. I have proof this company even persued me while I, was incarcerated but the DA was happy with me per the attorney. I never meant to committ any crime nor do I deal with Criminals, also I'm responsible for 89K in which I didn't steal. I feel this should be reversed due to me being mislead by Counsel. I need to get back to my family in the State of Georgia. we tried to payoff State Restitution for transfer but was denied due to victims restitution being added to State I need help with this matter.

"Documents Available upon request!"

Sincerely,

Dustin S. Morris

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Preston Moore

State of California JUL - 1 2008

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Imperial
(EXCEPT IN U.S. PLAINTIFF CASES)

2254	1983
FILING FEE PAID	Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/>
IF MOTION FILED	Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/>
COPIES SENT TO	Court <input checked="" type="checkbox"/> Probate <input checked="" type="checkbox"/>

FILED
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Preston Moore
PO Box 5008
Calipatria, CA 92233
F-95661

ATTORNEYS (IF KNOWN)

'08 CV 1207 LAB WMC

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|----------------------------|----------------------------|----------------------------|----------------------------|
| PT | DEF | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State
Incorporated or Principal Place of Business in This State
Citizen of Another State
Incorporated and Principal Place of Business in Another State
Citizen or Subject of a Foreign Country
Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act 29 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 7/1/2008

SIGNATURE OF ATTORNEY OF RECORD

R. Muley